

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	
To: The Commission		
Attn: Media Bureau		

**REPLY COMMENTS OF PUBLIC RADIO REGIONAL ORGANIZATIONS**

Eastern Public Radio (“EPR”), California Public Radio (“CPR”), Public Radio in Mid-America (“PRIMA”), Southern Public Radio (“SPR”), and Western States Public Radio (“WSPR”) (collectively, the public radio regional organizations or “PRROs”), file these reply comments in response to the FCC’s proceeding entitled *Second Order on Reconsideration and Further Notice of Proposed Rulemaking on the Creation of a Low Power Radio Service*, MM Docket No. 99-25 (the “*Second LPFM NPRM*”).

The PRROs submit that none of the comments filed in the response to the *Second LPFM NPRM* by LPFM advocates provide a legitimate basis – let alone a compelling reason -- to rejigger the FM translator and LPFM priorities in any way. As the PRROs Comments demonstrated, rejiggering those priorities will jeopardize public radio translator service -- a result which markedly disserves the public interest. Both services, LPFM and FM translator, should retain their “co-equal” status.

**I. There is No Easy, Workable Method to Categorize FM Translator Service Without Depriving Listeners of Public Radio FM Translator Service**

The LPFM proponents and others suggest a variety of mechanisms to separate what they view as “good” FM translator service (i.e., deserving of protection from LPFMs) from “evil” FM translator service (i.e., not deserving protection from LPFMs). The suggested mechanisms vary from trying to define what makes an FM translator “local” – by distance, local origination or local eligibility -- to grandfathering “legacy” FM translators, to reclassifying the entire FM translator system, to banning satellite-delivery methods (presumably in the reserved band, since satellite delivery is not permitted for non-reserved band translators) and various other methods. Some of these suggested mechanisms even seem designed to try to offer some protection to public radio FM translators from LPFM interference, but fail in that task. Public radio FM translator service is so varied in scope and implementation that it cuts across all the suggested categorization attempts. All of the suggested categories would cause some harm to public radio translators.

Therefore, the PRROs have carefully evaluated the comments and have concluded that none of these mechanisms can be instituted without unacceptable loss of public radio FM translator service to existing listeners, and without depriving potential future listeners of planned FM translator service. The PRROs submit that such loss of existing service to the public is contrary to the public interest and the bedrock principles upon which LPFM service was based.<sup>1</sup>

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<sup>1</sup> When the Commission created the LPFM service, it was with the understanding that LPFM would not “compromise the integrity of the FM spectrum” nor “cause unacceptable interference to existing radio service.” *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000) (“LPFM Order”) (emphasis added). The Commission envisioned that LPFMs would be authorized “throughout the FM band, where the stations will fit.” *Id.* at para. 58 (emphasis added)

From a public policy and practical perspective, the hue and cry from the loss of public radio FM translator service to some portion of the 9 million persons who receive their public radio service from translators and rely on those translators would be loud, negative and overwhelming.

The PRROs also submit that planned public radio FM translator service (from applications filed in the March 2003 Filing Window) is equally deserving of protection since, in many cases, potential listeners have been patiently waiting – for the better part of a decade – for expanded public radio service in their communities. It is wrong for the LPFM advocates or for the FCC to assume that these listeners would rather have the possibility of future LPFM service (from a future LPFM window) than long-desired and eagerly anticipated public radio service via an FM translator station sought by a legitimate, well-qualified public radio applicant. Thus, the PRROs do not support any categorization of FM translator service, and reassert that the public interest would be best served by preserving the status quo in terms of FM Translator and LPFM protection.

Moreover, the suggested categorizations are not easy or workable bright line tests. The LPFM advocates are asking the FCC to impose these ad hoc categories on a mature FM translator service (spanning both the reserved band and unreserved band) that has grown up over the course of decades. Such a task is not only administratively complex, but would undoubtedly require ample opportunities for rule waivers and other “exceptions” to the rigid category rules. Imposing a whole additional section of complicated categories and subcategories on FM translator and LPFM service would increase FCC processing time, delay the institution of new services and unnecessarily add to FCC processing and administrative burdens. In contrast, as discussed below in Section II, the tangible public service benefits from all this administrative wrangling are speculative, at best.

As suggested in the PRROs Comments and by other commenters, an easier, workable approach to the alleged LPFM “preclusion” issue would be to set reasonable limits on FM translator applications for filing windows and on nationwide ownership of FM translator licenses, as well as stringent FCC enforcement of existing rules and policies that deter speculative or non-bona-fide FM translator applications. There is no reason to use a sledgehammer (widespread change in priorities) to solve the so-called “Great Translator Invasion” problem – a more restrained approach will suffice.

## **II. LPFM Advocates Have Not Demonstrated Preclusion From FM Translators**

The LPFM advocates claim that their LPFM “preclusion” problem is due to the “Great Translator Invasion” of the March 2003 filing window. However, there is simply no empirical evidence that this is the case, or that the majority of their “preclusion” problems (or even a meaningful amount of those problems) would be resolved by giving LPFMs priority over translators. In fact, the preclusion studies submitted with the REC Network Comments appear to show:

- (1) that LPFM face no preclusion at all throughout most of the country, such that no change in FM translator priorities is needed at all (depicted in the studies by white areas)
- (2) that most of the preclusion in major markets is due to existing full service FM stations and Channel 6 protection requirements, such that no change in FM translator priorities is needed at all (depicted in the studies by red areas);
- (3) that the next biggest preclusion factor is due to existing FM third adjacent channel protections, such that no change in FM translator priorities is needed at all (depicted in the studies by yellow areas); and

(4) that only if all (absolutely all) of REC's recommendations are adopted (some of which related to IF spacing and Channel 6 protection and not to FM translators), would some areas of the country have more availability of LPFM channels – not guaranteed service from LPFMs, but just more availability for them – these areas are typically on the fringe of markets (depicted in the studies by green areas).

Thus, based on REC's studies, coupled with a similar preclusion study filed with Comments by Edgewater Broadcasting and Radio Assist Ministry, Inc., the majority of the LPFM preclusion does not come from FM translators (especially public radio translators) but from limitations or constraints on LPFM that the Commission fully acknowledged when creating LPFM in the first place – existing congestion in the FM spectrum.<sup>2</sup>

Moreover, the REC study does not show the preclusion stemming only from existing FM translators, or from FM translators filed in the March 2003 window. Instead, the study shows only that some areas of the country could have available LPFM channels if all (all) of REC's recommendations are adopted, which recommendations include eliminating IF protections to full service stations and making changes to Channel 6 protections. The PRROs submit that this study, coupled with a similar study by Edgewater Broadcasting and Radio Assist Ministry, Inc., demonstrate that the LPFM preclusion problem will not, in fact, be resolved by giving LPFMs priority over FM translators. The ends here simply do not justify the means.

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<sup>2</sup> “FM band crowding may preclude or limit LPFM opportunities in certain markets.” Id.

### **III. Conclusion**

As demonstrated by these Reply Comments, as well as the initial Comments of the PRROS, keeping both the FM translator service and the LPFM service "co equal" in status is the best solution and best serves the public interest.

Respectfully Submitted,

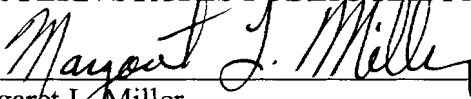
**EASTERN PUBLIC RADIO**

**CALIFORNIA PUBLIC RADIO**

**PUBLIC RADIO IN MID-AMERICA**

**SOUTHERN PUBLIC RADIO**

**WESTERN STATES PUBLIC RADIO**

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